IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Girdhari Ram Vs. State of Raj. & Anr.

S.B.CR.MISC. PETITION NO.1059/2004

DATE OF ORDER :: July 11,2006

HON'BLE MR.H.R.PANWAR,J.

Mr.Mahesh Bora, for the petitioner.
Mr. Ashok Upadhyaya, P.P. for the State.
Mr.Shambhoo Singh, for non-petitioner No.2.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner seeks quashing of FIR No.475 dt. 9.11.2004, Police Station, Balotra lodged by non-petitioner No.2 against the petitioner for the offences under sections 420, 406, 467, 468 and 471 I.P.C.

I have heard learned counsel for the petitioner, Public Prosecutor and the counsel appearing for non-petitioner No.2. Perused the first information report as also the police investigation diary.

It is contended by the learned counsel for the petitioner that an FIR No.375 dt. 3.9.2004 was lodged regarding theft of the very motorcycle. In that case, after investigation, the police filed the challan against Kishore s/o Ghewar Chand and Govind Ram for the offence under section 379 I.P.C. The petitioner has filed the instant FIR after the motorcycle which was subject-matter of the FIR No.375 dt. 3.9.2004 was released by the trial court in favour of the petitioner on "Supurdaginama". The trial court finding the registration of the motorcycle bearing No.RJ-04-9047 in favour of the petitioner, released the same on "Supurdaginama" in his favour giving interim custody during the pendency of the case and, therefore, this FIR is nothing but abuse of process of the Court.

Learned Public Prosecutor and counsel appearing for non-petitioner No.2 submit that the non-petitioner No.2 purchased the motorcycle from one Mohan Lal son of Bhanwar Lal Bagrecha by caste Jain resident of Balotra, who is the proprietor of M/s Mohan Mahaveer Fabrics, Industrial Area, Balotra for a consideration of Rs.9000/- and a receipt has been executed by him in favour of non-petitioner No.2 as also a document for transfer of ownership, which was blank but duly signed by Mohanlal and was handed over to non-petitioner No.2. The document of the vehicle and the transfer letter of the ownership

which was though signed by the previous owner Mohanlal but was blank and the bag which was kept in the dicky of motorcycle were stolen by Kishore accused in the crime report No.375/2004 dt. 3.9.2004 and by misusing the documents, the petitioner got the motorcycle transferred in his favour.

From perusal of the investigation diary, the Form 30 under Rule 55(2) and (3) of Motor Vehicle Rules for transfer of ownership of the motorcycle, prima facie shows that there is an over-writing on the date '11.8.2004', which was otherwise obviously some other date or earlier to 11.8.2004 than the time of attestation by the Notary. The document duly filled appears to be not in the handwriting of the previous owner Mohanlal. During investigation, the police recorded the statement of Mohanlal, in whose name the motorcycle was previously registered. He categorically stated that he sold the motorcycle for a consideration of Rs.9000/- to non-petitioner No.2, who is the complainant. A receipt to this effect has been executed by him on 02.8.2002, which is on record. Even the document Form 29, the photocopy of which has been shown to me by the learned counsel for the petitioner also shows that the form mentioning the name and the particulars was not filled by Mohanlal which is prima facie evident on bare look. In the circumstances, therefore, it cannot be said that the instant FIR is abuse of

process of any court. There is a prima facie strong case from the police investigation diary particularly from the statement and receipt executed by Mohanlal, who was the previous registered owner of the motorcycle. In the circumstances, therefore, no case for quashing of the FIR is made out in view of decisions of Hon'ble Supreme Court in State of Haryana & Ors. vs. Bhajan Lal & Ors., **1992 (Suppl) 1 SCC 335,** wherein the Hon'ble Supreme Court held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest o rare case. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Apex Court further held that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offence is legitimately exercise in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds.

In Union of India & Ors. vs. B.R.Bajaj, **(1994) 2 SCC 277,**

the Hon'ble Apex Court held that the inherent power under section 482 of the Code cannot be exercised to quash the FIR when the allegations in FIR discloses commission of a cognizable offence because several aspect of the FIR still to be investigated by the police. At that stage, the High Court cannot go into the question whether offences alleged in the FIR are made out or not. The statutory power of police to investigate cannot be interfered with in exercise of inherent power by the High Court.

Consequently, the misc. petition is dismissed. Police case diary be returned to the investigating agency forthwith. Application dt. 28.5.2005 stands disposed of.

[H.R.PANWAR],J.

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